

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**ERIE INSURANCE PROPERTY
AND CASUALTY COMPANY,**

Plaintiff,

v.

**CIVIL ACTION NO.: 2:20-CV-00321
The Honorable Irene C. Berger, Judge**

JAMES SKYLAR COOPER,

Defendant and Counterclaimant.

**ERIE INSURANCE PROPERTY AND CASUALTY
COMPANY'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Petitioner, Erie Insurance Property & Casualty Company (“Erie”), by and through counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves this Court for an Order granting it summary judgment on its Petition for Declaratory Judgment on the basis that there are no material issues of fact and Erie is entitled to judgment as a matter of law.

By way of its Petition for Declaratory Judgment, Erie seeks a declaration in this matter that there is no underinsured motorists coverage available to Respondent James Skylar Cooper (hereinafter “Cooper”) under the Erie Policy issued to Pison Management, LLC (“Pison Management”), Cooper’s employer. The undisputed facts in this case establish that Cooper sustained injuries from a motor vehicle accident that occurred on August 9, 2019 while he was occupying a vehicle owned and operated by Rick Huffman. The Huffman vehicle was not a listed vehicle under the Erie Policy and was not owned by Pison Management. Since the vehicle was

being used at the time in connection with Cooper and Huffman's employment with Pison Management, the Huffman vehicles is considered a Non-Owned Auto under the Erie Policy. The Erie Policy, by its terms, does not extend underinsured motorist coverage to Non-Owned Autos.

In an effort to find underinsured motorist coverage applicable to the August 9, 2019 motor vehicle accident, Cooper instead alleges that this Court should find that he was in fact "using" the vehicle that was traveling in front of the Huffman vehicle at the time of the accident. In making this assertion, Cooper seeks to expand the motor vehicle "use" doctrine far beyond the current bounds of West Virginia jurisprudence. West Virginia case law makes clear that there was no causal connection between Cooper and the vehicle traveling in front of him at the time of the motor vehicle accident, and Cooper's injuries were not foreseeably identifiable with the vehicle traveling in front of him. Instead, as logic would dictate, this Court should find that Cooper was using the vehicle he was traveling in, the vehicle owned by Huffman. In making such a finding, it is clear that the Erie Policy issued to Pison Management does not provide underinsured motorist coverage for Cooper as a result of the August 9, 2019 motor vehicle accident and, on that basis, Erie is entitled to judgment as a matter of law. In support of this Motion for Summary Judgment, Erie has filed contemporaneously herewith its Memorandum of Law in Support of its Motion for Summary Judgment. Erie also attaches hereto the exhibits in support of its Motion for Summary Judgment:

Exhibit 1 – Traffic Crash Report

Exhibit 2 – Deposition Transcript of James Sklyar Cooper

Exhibit 3 – Certified Copy of the Erie Policy

WHEREFORE, for the reasons set for the herein and in the contemporaneously-filed Memorandum of Law, Erie Insurance Property & Casualty Company respectfully requests that this Court enter Summary Judgment its favor in this matter and declare as follows:

- A. That, based on the language of the Erie Policy, underinsured motorists coverage is not provided for non-owned autos.
- B. That, based on the language of the Erie Policy, Cooper does not qualify as “you” or “others we protect” for purposes of underinsured motorists coverage.
- C. That based on the language of the Erie Policy, Cooper was not “using” a vehicle insured for underinsured motorist coverage under the Erie Policy issued to Pison Management at the time of the Accident;
- D. That based on the language of the Erie Policy, Cooper is not entitled to underinsured motorists coverage under the Erie Policy issued to Pison Management.
- E. Erie Insurance Property & Casualty Company also requests any such other and further relief as this Court deems just and appropriate.

**ERIE INSURANCE PROPERTY
& CASUALTY COMPANY**

By Counsel

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CERTIFICATE OF SERVICE

I, MATTHEW J. PERRY, counsel for Erie Insurance Property & Casualty Company, do hereby certify that service of the foregoing “**ERIE INSURANCE PROPERTY AND CASUALTY COMPANY’S MOTION FOR SUMMARY JUDGMENT**” has been made upon counsel of record via the Court’s CM/ECF system on this the 2nd day of November, 2020, addressed as follows:

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